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20 **UNITED STATES DISTRICT COURT**

21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CASSANDRA MARSHALL AND RAQUEL

23 RILEY, on behalf of themselves and all

24 others similarly situated,

25 Plaintiffs,

26 v.

27 PROCTER & GAMBLE COMPANY AND

28 SPD SWISS PRECISION DIAGNOSTICS

GMBH,

Defendants.

Civil Action No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs Cassandra Marshall and Raquel Riley bring this action on behalf of themselves and  
2 all others similarly situated against Procter & Gamble Company and SPD Swiss Precision  
3 Diagnostics GmbH (together, “Defendants” or “Clearblue”). Plaintiffs make the following allegations  
4 based on the investigation of their counsel, and based upon information and belief, except as to those  
5 allegations specifically pertaining to themselves, which are based on their personal knowledge.

6 **NATURE OF THE ACTION**

7 1. Clearblue sells a Menopause Stage Indicator (“Menopause Test”) that supposedly  
8 indicates your menopause stage by measuring your hormone FSH (follicle stimulating hormone)  
9 levels. The Menopause Test consists of 5 test sticks that measure FSH in urine that Clearblue claims  
10 will indicate your menopause stage as: pre-, early peri-, late peri- or postmenopause.<sup>1</sup>

11 2. While Clearblue touts that its Menopause Test can indicate your menopause stage by  
12 measuring FSH, in fact, FSH levels cannot indicate menopause and have nothing to do with treatment  
13 of the symptoms of menopause. As experts in the field explain, measuring FSH is not useful for  
14 indicating menopause because FSH levels vary unpredictably in the lead up to menopause. Instead,  
15 pattern of menstrual bleeding is the only useful datapoint in indicating a menopause transition, or  
16 menopause. As FSH levels cannot indicate a menopause stage as Clearblue claims, the Menopause  
17 Test is worthless.

18 3. Although measuring FSH levels in urine cannot indicate stages of menopause as  
19 Clearblue advertises on the label of its Menopause Test, Clearblue exploits mid-life women by selling  
20 them useless Menopause Tests for \$20 to \$30.

21 4. By using this deceitful scheme to sell useless Menopause Tests, Defendants harmed  
22 Plaintiffs and similarly situated purchasers who purchased the Menopause Test based on Defendants’  
23 fraudulent claim that it was useful in indicating menopause. Accordingly, Plaintiffs bring this action  
24 for violation of nationwide and California consumer protection laws on behalf of themselves and all  
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26 \_\_\_\_\_  
27 <sup>1</sup> See, e.g., Clearblue Menopause Stage Indicator “Questions and answers” (last accessed Oct. 24,  
28 2024), <https://perma.cc/UM9Y-4CE5>.

1 others similarly situated to obtain monetary damages for themselves and other similarly situated  
2 purchasers.

### 3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
5 § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the  
6 proposed classes are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100  
7 members of the putative class, and at least one class member is a citizen of a state different than  
8 Defendants. Complete diversity also exists between at least one plaintiff and Defendant.

9 6. This Court has personal jurisdiction over Defendants because a substantial portion of  
10 the events giving rise to Plaintiffs' claims occurred in California, including their purchases of the  
11 Clearblue Menopause Test.

12 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial  
13 part of the events or omissions giving rise to the claim occurred in this District.

### 14 **PARTIES**

15 8. Plaintiff Cassandra Marshall is a citizen of California, residing in Stanislaus County.  
16 While living in Marin County, Plaintiff Marshall purchased two packages of the Clearblue  
17 Menopause Test for her personal use in or around August and September 2023 from a Rite Aid store  
18 in San Rafael, California. Prior to making her purchase, Plaintiff Marshall viewed a social media  
19 advertisement for the Clearblue Menopause Test and saw Defendants' claim that the Clearblue  
20 Menopause Test was useful in indicating menopause and menopause stage. Plaintiff Marshall also  
21 viewed the Clearblue Menopause Test packaging, which makes the same claim, at the Rite Aid store  
22 where she made her purchases. Based on this representation, Plaintiff Marshall purchased the  
23 Clearblue Menopause Test. Defendants' representation that it was effective and useful for indicating  
24 menopause stage was a substantial factor in her decision to purchase the Clearblue Menopause Test.  
25 Had Plaintiff Marshall known that the Clearblue Menopause Test was not useful in indicating  
26 menopause or menopause stage, she would not have purchased the Clearblue Menopause Test.

9. Plaintiff Raquel Riley is a citizen of California, residing in Alameda County. Plaintiff Riley purchased the Clearblue Menopause Test for her personal use in or around October 2023 from a CVS store in Fremont, California. Prior to making her purchase, Plaintiff Riley viewed a television advertisement for the Clearblue Menopause Test and saw Defendants' claim that the Clearblue Menopause Test was useful in indicating menopause and menopause stage. Plaintiff Riley also viewed the Clearblue Menopause Test packaging, which makes the same claim, when she made her purchase at CVS. Based on this representation, Plaintiff Riley purchased the Clearblue Menopause Test. Defendants' representation that it was effective and useful for indicating menopause stage was a substantial factor in her decision to purchase the Clearblue Menopause Test. Had Plaintiff Riley known that the Clearblue Menopause Test was not useful in indicating menopause or menopause stage, she would not have purchased the Clearblue Menopause Test.

10. Defendant Procter & Gamble Company is incorporated in the State of Ohio, with a principal place of business in Cincinnati, Ohio. Procter & Gamble distributes the Clearblue Menopause Test in the United States. Defendant Procter & Gamble markets the Clearblue Menopause Test through its social media accounts,<sup>2</sup> on its website,<sup>3</sup> and on its blog.<sup>4</sup>

11. Defendant SPD Swiss Precision Diagnostic GmbH is a Swiss company with its

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<sup>2</sup> See, e.g., Procter & Gamble, LinkedIn, <https://perma.cc/BP3V-2NPT> (last accessed Oct. 10, 2024) (stating "Our latest #PGInnovation, the Clearblue Menopause Stage Indicator, is an easy-to-use, at-home test kit that works with a free app to help determine a woman's likely stage of menopause"); @ProcterGamble, X (Oct. 19, 2023, 7:30 a.m.), <https://perma.cc/6S9S-29VE> ("Our latest #PGInnovation, the Clearblue Menopause Stage Indicator is helping women turn up the volume on menopause conversations."); @ProcterGamble, X (Oct. 19, 2023, 7:55 a.m.), <https://perma.cc/CM3E-2J47> ("The easy-to-use, at-home test kit comes with five tests and access to a free app that can help determine a woman's likely stage of menopause and provide information to share with healthcare providers."); @ProcterGamble, X (Oct. 19, 2023 8:20 a.m.), <https://perma.cc/VM6A-RNXN> ("Learn more about how the Clearblue Menopause Stage Indicator works on our blog"); @ProcterGamble, Instagram (Oct. 19, 2023), <https://perma.cc/C9T7-SF2S>.

<sup>3</sup> *Clearblue Launches First Ever At-Home Product That Can Indicate a Woman's Current Stage of Menopause*, Procter & Gamble (Aug. 29, 2023), <https://perma.cc/CT96-F554>; *Gabrielle Union Joins Clearblue in Latest Campaign to Turn Up the Volume on Menopause*, Procter & Gamble (Nov. 9, 2023), <https://perma.cc/5MGJ-RPLN>.

<sup>4</sup> *P&G Innovates for Any Age and Every Stage of Life*, Procter & Gamble (Oct. 19, 2023), <https://perma.cc/K2QF-M6R8>.

1 principal place of business in Geneva, Switzerland. SPD Swiss Precision Diagnostic GmbH  
2 manufactures the Clearblue Menopause Test and holds the trademark to the Clearblue brand.

3 12. At all times relevant to the allegations in this matter, each Defendant acted in concert  
4 with, with the knowledge and approval of, and/or as the agent of the other Defendant within the  
5 course and scope of the agency, regarding the acts and omissions alleged.

6 **ALLEGATIONS COMMON TO ALL CLASS MEMBERS**

7 13. Defendants' fraudulent scheme to sell the Clearblue Menopause Test as a tool for  
8 indicating menopause violates California's and other states' consumer protection laws. As detailed  
9 below, Defendants' claim that their Menopause Test is capable of indicating a woman's menopause  
10 stage by measuring FSH is false and misleading because, in fact, experts in the field confirm that  
11 FSH measurements are useless in indicating menopause or the menopause transition.

12 **I. Clearblue uniformly advertises that its Menopause Test will indicate users'**  
13 **menopause stage.**

14 14. Clearblue launched their Menopause Test in or around August 2023.

15 15. Clearblue describes the "Menopause Test" as a "Menopause Stage Indicator" on the  
16 front, side, and back of the Clearblue Menopause packaging. *See* Exhibit A (Clearblue packaging).

17 16. The Clearblue Menopause Test requires users to gather five urine samples over a 10-  
18 day span that the user enters into a "free" phone application. Clearblue emphasizes that using the five  
19 provided test sticks to measures FSH combined with a free phone App "indicates your likely  
20 menopause stage."

21 17. As shown below, the front of the Clearblue Menopause Test packaging depicts an  
22 image of the test showing that the test can indicate whether a user is in "Premenopause," "Early  
23 Perimenopause," "Late Perimenopause," or "Postmenopause."

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The advertisement features a white and green Clearblue Menopause test stick with two red lines. To its right is a smartphone displaying the 'Early perimenopause' app interface. The app shows a woman's photo and a 'My menopause journey' timeline with stages: Premenopause, Early perimenopause (highlighted), Late perimenopause, and Postmenopause. The background is a gradient of blue and green.

**new**

# Clearblue<sup>®</sup>

MENOPAUSE

Early perimenopause

My menopause journey

- Premenopause
- Early perimenopause
- Late perimenopause
- Postmenopause

helps you understand your **menopause journey**<sup>1</sup>

**Menopause Stage Indicator**

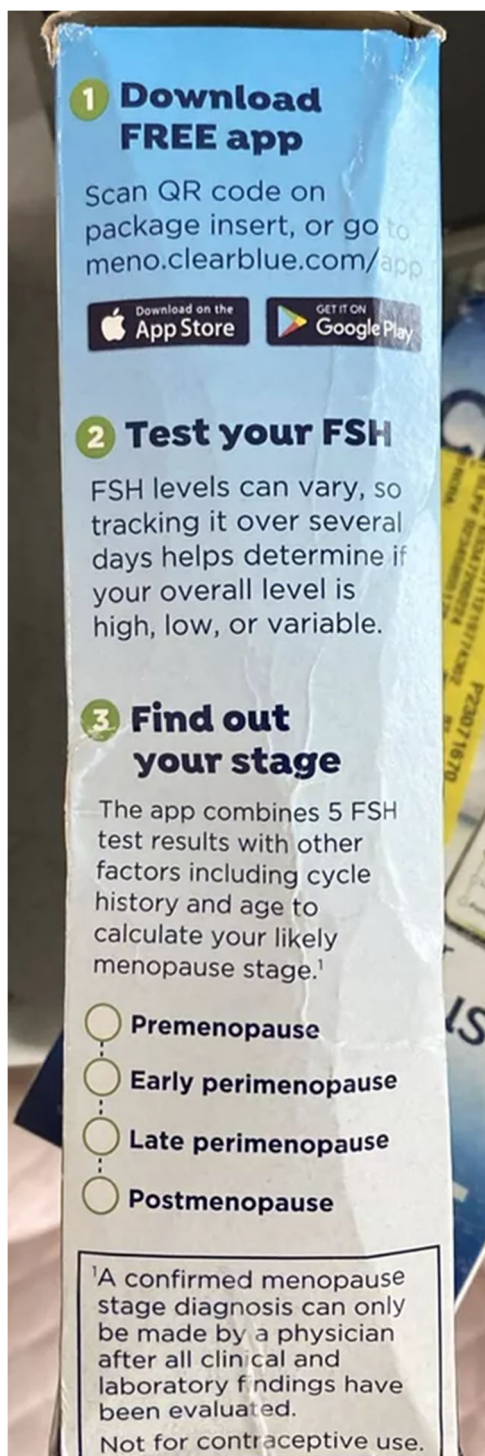
Likely menopause stage given **only** when test sticks used with **FREE** app.

Phone not included.  
Check your phone compatibility.<sup>2</sup>  
<sup>1,2</sup>See sides of pack.

**5**  
test sticks



18. Similarly, as shown below, the side panel provides three-step instructions to find out the user's likely menopause stage, stating: "(1) Download Free app ... (2) Test your FSH ... and (3) Find out your stage" and the lists the following menopause stages: Premenopause, Early perimenopause, Late perimenopause, Postmenopause.



19. This same message, that Clearblue’s urine test that measures FSH is useful in indicating menopause stages, is likewise consistently made by online vendors like amazon.com., target.com, cvs.com, walgreens.com, and Kroger.com that depict images of Clearblue’s packaging and other marketing statements on their websites. *See* Exhibit A (examples of websites depicting identical claims).

20. Plaintiffs and the similarly situated class members thus bought Clearblue’s so-called Menopause Stage Indicator based on their reasonable belief it was effective for its sole stated purpose: indicating menopause.<sup>5</sup>

**II. Clearblue’s claim that its Menopause Test indicates a menopause stage is false and misleading.**

21. Contrary to Clearblue’s claims that measuring FSH with its test sticks will indicate users’ menopause stage, hormone tests are not useful because the FSH levels they measure do not factor into the determination of menopause stage at all. Instead, the only way to determine menopause is through one year of no menstruation. Stated otherwise, the only datapoint that is relevant to the determination of menopause stage is the pattern of menstrual bleeding—meanwhile FSH fluctuates widely and cannot indicate anything.

22. Clearblue’s use of the stages—Premenopausal, Early Perimenopause, Late Perimenopause, and Menopause—is also false, misleading, and confusing. Clearblue derives these purported menopause stages from the Study of Women’s Health Across the Nation (“SWAN”). But the staging criteria from SWAN’s menopause stages were for research purposes and are not clinically relevant to real women.<sup>6</sup> Further, the SWAN stages depended only on bleeding pattern and did and

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<sup>5</sup> For example, dictionary.com defines “indicates” in the medical context as “to show the presence of (a condition).” *Indicate*, Dictionary.com (Oct 4, 2024), <https://perma.cc/G3WY-6MNN>. Thus, consumers reasonably believe that the test is capable of showing the presence of users’ menopause stage.

<sup>6</sup> In a clinical setting, the time leading up to menopause is simply referred to as the “menopause transition” and is not divided into 4 stages. Dr. Jen Gunter, *Don’t Waste Your Money on the Clearblue Menopause Journey Test*, THE VAJENDA (Sept. 8, 2023), <https://perma.cc/22XK-Q3TX> (citing SWAN staging criteria).



1 did not consider FSH levels at all—as, again, bleeding pattern is the only indicator for menopause.<sup>7</sup>  
 2 Clearblue thus cobbles together FSH and SWAN’s menopause stages—that were for research and  
 3 that had nothing to do with FSH—to create a false aura of scientific credibility for its useless FSH  
 4 urine test sticks.

5 **A. Experts agree that measuring FSH levels is not a useful indicator of menopause.**

6 23. Measuring FSH is not useful because FSH levels vary unpredictably in the lead up to  
 7 menopause.

8 24. The Food and Drug Administration has explained that testing FSH does not indicate  
 9 menopause stages because FSH levels may rise and fall during the normal menstrual cycle.  
 10 Specifically, according to the FDA, an at-home “menopause test” “does not detect menopause or  
 11 perimenopause.” Instead, it detects only FSH levels, which “may rise and fall during your menstrual  
 12 cycle.”<sup>8</sup>

13 25. Multiple medical doctors have similarly commented that Clearblue’s hormone test’s  
 14 measurement of FSH is not useful.

15 26. As one obstetrician-gynecologist, Dr. Jen Gunter, Clearblue’s Menopause test is  
 16 harmful because “It’s a waste of money” and the Clearblue test could even cause confusion in  
 17 accessing needed menopause therapies. She explains that FSH is not useful for indicating menopause  
 18 because it fluctuates unpredictably:

19 Someone can have four months of no bleeding, have an FSH level that looks like  
 20 menopause, and then boom, they ovulate. That is why we wait for one year of no  
 21 bleeding. Testing just can’t account for the unpredictability of the last year or so of  
 22 ovulation.<sup>9</sup>

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24 <sup>7</sup> In that regard, according to SWAN, “Premenopausal” is indicated if there is “no change in bleeding  
 25 pattern,” “Early perimenopause” is indicated by “change in length of bleed or inter bleed interval,”  
 26 “Late perimenopause” is indicated by “no bleeding in 3-11 months,” and “Menopause” is indicated  
 27 by “no bleeding in 12 months.” *Id.*

<sup>8</sup> *Menopause*, FDA (Sept. 27, 2018),  
<https://web.archive.org/web/20250123010133/https://www.fda.gov/medical-devices/home-use-tests/menopause>.

<sup>9</sup> Gunter, *supra* n.6.

1           27. Doctors at Cedars-Sinai agree that Clearblue’s menopause test is worthless. In an  
2 article answering the question “should you take an at-home menopause test,” doctors at Cedars-Sinai  
3 agree that you should not, explaining that “[i]t isn’t possible to verify the presence of menopause with  
4 a blood or urine test.”<sup>10</sup> Instead, “[t]he diagnosis of menopause is clinical, so even clinicians shouldn’t  
5 rely on lab tests to make the final diagnosis,” said Jessica Chan, MD, a reproductive endocrinologist  
6 at Cedars-Sinai. “It’s a diagnosis you make in retrospect, when a woman hasn’t had a menstrual cycle  
7 in 12 months.” At-home menopause tests check the levels of FSH in the urine. According to the  
8 Cedars-Sinai article, however, because FSH levels fluctuate during a woman’s cycle, it’s not possible  
9 to get an accurate snapshot of someone’s menopause status by checking these hormones. As Keren  
10 Lerner, MD, a Cedars-Sinai OB-GYN explained, “[i]n menopause, FSH goes up and estradiol levels  
11 drop low, but in a normal cycle, FSH fluctuates anyway, which could make at-home test results  
12 inaccurate.”<sup>11</sup>

13           28. Dr. Ekta Kapoor, assistant director of the Mayo Clinic Center for Women’s Health  
14 explained to the New York Times that when patients ask her for an FSH test, she talks them out of  
15 it—because if a woman’s cycle history suggests she might be menopausal, no matter what the FSH  
16 results say, symptom management options, such as hormone therapy, don’t change.<sup>12</sup>

17           29. Anna Barbieri, MD, a gynecology and menopause specialist in New York, similarly  
18 reported to Motherly that while there are many reasons the test of FSH levels could be inaccurate that  
19 it is important to “[r]emember, the only time that FSH goes high and stays high is in the  
20 postmenopause phase—when it has been a full 12 months without a menstrual period”—and while  
21 in that case the test will be accurate—“that is when the test has the least utility because it is very easy  
22 for you or your doctor to know when it has been 12 months without a menstrual period. We don’t  
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25 <sup>10</sup> Lisa Fields, *Should You Take an At-Home Menopause Test?*, CEDARS-SINAI BLOG (May 9, 2024),  
26 <https://perma.cc/83GE-4UQZ>.

27 <sup>11</sup> *Id.*

28 <sup>12</sup> Alisha Haridasani Gupta, *Can a New At-Home Test Tell You if You’re in Menopause?*, THE NEW  
YORK TIMES (Oct. 2, 2023), <https://perma.cc/5GNV-T5VM>.

1 need any lab testing to tell us that!”<sup>13</sup> In other words, Clearblue’s menopause test will only accurately  
 2 stage menopause once it has become obvious that the user is in the postmenopausal phase without  
 3 any hormone testing.

4 30. Stephanie S. Faubion, MD, a professor and chair of the Department of Medicine at  
 5 Mayo Clinic in Jacksonville, FL likewise reported to Motherly that symptoms—not FSH levels—  
 6 guide treatment because “FSH blood level is typically all over the place in perimenopause and may  
 7 vary from one day to the next,” such that FSH level “isn’t useful information.”<sup>14</sup>

8 31. BBC similarly reported that “top UK doctors say” that “[w]omen are wasting their  
 9 time and money buying do-at-home menopause testing kits.”<sup>15</sup> Leading menopause and hormone  
 10 doctor Annice Mukherjee, from the Society of Endocrinology, told BBC that FSH urine tests were  
 11 “another example of exploitation of mid-life women by the commercial menopause industry, who  
 12 have financial conflicts of interest.” She accused them of using misleading information about “FSH  
 13 sometimes being a helpful marker of menopause” and called the perimenopause a “hormone  
 14 rollercoaster.” “It’s not helpful for women to access [FSH] directly,” she said. “It is not a reliable  
 15 marker of perimenopause and can cause[] more confusion among women taking the test.” BBC added  
 16 that “NHS guidelines also discourage FSH testing for over-45s with classic menopausal symptoms -  
 17 such as hot flushes - because it adds nothing diagnostically.”

18 32. WebMD similarly reports that FSH is not a reliable marker of menopause explaining  
 19 that “The FSH test only tells you if you have a high FSH level. It doesn’t tell you if you are definitely  
 20 in menopause (or premenopausal or perimenopausal).”<sup>16</sup>

21 33. Another commentator, Dr. Bev Young, agrees, cautioning women not to waste their  
 22 money on Clearblue’s Menopause test. Dr. Young explains that FSH “is not a reliable marker for  
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 25 <sup>13</sup> Kristen Fischer, *Should you try an at-home menopause test?*, MOTHERLY (Sept. 5, 2023),  
<https://perma.cc/EEC5-W5V8>.

26 <sup>14</sup> *Id.*

<sup>15</sup> Michelle Roberts, *Shop-bought menopause tests not worth it, women advised*, BBC (June 9,  
 2022), <https://perma.cc/T9HT-XM92>.

27 <sup>16</sup> *Home Menopause Testing Kits: Are They Worth It?*, WebMD (May 27, 2024),  
 28 <https://perma.cc/K9ME-5M2Z>.

menopause” as “[i]ts levels vary greatly from person to person, and some individuals may experience low FSH levels even after their final period.”<sup>17</sup> She also emphasizes that “[h]ealthcare providers base treatment decisions on symptoms rather than hormone levels or specific phases of menopause” and that “Diagnosis and treatment should be based on symptoms rather than test results.”

34. Thus, as numerous experts in the field confirm, Defendants’ advertising of its FSH urine test as capable of indicating menopause stage is false and misleading as the Clearblue Menopause Test is actually a worthless gimmick that harms consumers who waste their money on it. Indeed, Defendants’ conduct is particularly egregious because the confusion its false advertising causes could complicate or interfere with users getting treatment for their symptoms from medical professionals.

### **CLASS ACTION ALLEGATIONS**

35. Plaintiffs incorporate and reallege the above paragraphs.

36. Plaintiffs Cassandra Marshall and Raquel Riley bring this action on behalf of themselves and the members of the proposed Nationwide Class, which consists of:

All persons in the United States that purchased the Clearblue Menopause Test for personal, family, or household purposes from the beginning of the applicable statutory period through the date notice is disseminated.

Excluded from the Nationwide Class are Defendants; any entity in which Defendants have a controlling interest; and any legal representative, heir or assign of Defendants. Also excluded from the Nationwide Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

37. Plaintiffs further seek to represent the proposed California Sub-Class which consists of:

All persons who purchased the Clearblue Menopause Test for personal, family, or household purposes in the State of California from the beginning of the applicable statutory period through the date notice is disseminated.

Excluded from the California Sub-Class are Defendants; any entity in which Defendants have a controlling interest; and any legal representative, heir or assign of Defendants. Also excluded from the California Sub-Class are any federal, state

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<sup>17</sup> Dr. Bev Young, *We Agree with Dr. Gunter – Definitely, Don’t Waste Your Money on the Clearblue Menopause Pee Test*, BRIA (Sept. 18, 2023), <https://perma.cc/3MSQ-NFRT>.

1 or local governmental entities, any judicial officer presiding over this action and  
2 the members of his/her immediate family and judicial staff, and any juror  
assigned to this action.

3 38. Plaintiffs reserve the right to amend or modify the definitions of the proposed  
4 Nationwide Class and California Sub-Class (collectively, the “Classes”) after having an opportunity  
5 to conduct discovery.

6 39. The members of the Classes are so numerous that joinder is impractical. The Classes  
7 consist of thousands of members, the precise number which is within the knowledge of and can be  
8 ascertained only through Defendants’ records.

9 40. There are numerous questions of fact and law common to the Classes which  
10 predominate over any questions affecting only individual members of the Classes. Among the  
11 questions of law and fact common to the Classes are:

- 12 a. Whether Defendants’ advertising and sale of the Clearblue Menopause Test  
13 was false and misleading;
  - 14 b. Whether Defendants’ conduct is likely to deceive an objectively reasonable  
15 consumer;
  - 16 c. Whether Defendants’ marketing conduct described herein constitutes  
17 violations of the laws asserted;
  - 18 d. Whether Defendants’ omissions and misrepresentations regarding the value  
19 of its Menopause Test described herein constitute unfair or deceptive acts or  
20 practices in violation of state consumer protection laws;
  - 21 e. Whether Plaintiffs and the members of the Classes have suffered damages as  
22 a result of Defendants’ actions and the amount thereof;
  - 23 f. Whether Plaintiffs and the members of the Classes are entitled to damages;
  - 24 g. Whether the Clearblue Menopause Test has any value;
  - 25 h. Whether Plaintiffs and the members of the Classes are entitled to other  
26 appropriate remedies including attorneys’ fees and costs.
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41. Plaintiffs' claims are typical of the claims of the members of the Classes because Plaintiffs, like all members of the Classes, were exposed to Defendants' false and misleading marketing, purchased Defendants' worthless product, and suffered a loss as a result of that purchase.

42. Plaintiffs are representatives who will fully and adequately assert and protect the interests of the Classes and have retained counsel who are experienced in prosecuting class actions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Classes.

43. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Classes is economically unfeasible and procedurally impracticable.

44. While the aggregate damages sustained by the Classes are in the millions of dollars, the individual damages incurred by each member of the Classes resulting from Defendants' wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual members of the Classes prosecuting their own separate claims is remote, and, even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

**COUNT I**

**Violation of California Consumer Legal Remedies Act, Cal. Civil Code § 1750, *et seq.***

**(On Behalf of Plaintiffs Cassandra Marshall, Raquel Riley, and the California Sub-Class)**

45. Plaintiffs Cassandra Marshall and Raquel Riley incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

46. This cause of action is brought pursuant to the Consumer Legal Remedies Act, California Civil Code § 1750 (“CLRA”). Plaintiffs are each a “consumer” as defined by California Civil Code § 1761(d). The Clearblue Menopause Test is a “good” within the meaning of the CLRA.

47. Defendants violated and continue to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the



1 California Sub-Class which were intended to result in, and did result in, the sale of the Clearblue  
2 Menopause Test:

3 (5) Representing that [the Clearblue Menopause Test has] . . . approval,  
4 characteristics, . . . [and] benefits . . . which [it does] not have . . .

5 (7) Representing that [the Clearblue Menopause Test is] of a particular standard,  
6 quality or grade . . . if [it is] of another.

7 (9) Advertising goods . . . with intent not to sell them as advertised.

8 (16) Representing that [the Clearblue Menopause Test has] been supplied in  
9 accordance with a previous representation when [it has] not.

10 48. Defendants violated the CLRA by representing and failing to disclose material facts  
11 on the Clearblue Menopause Test's labeling and packaging and associated advertising, as described  
12 above, when it knew, or should have known, that the representations were false and misleading and  
13 that the omissions were of material facts it was obligated to disclose. Such conduct began in or around  
14 August 2023 and is ongoing.

15 49. Pursuant to § 1782 of the CLRA, Plaintiffs sent notification, a true and correct copy  
16 of which is attached hereto, as Exhibit B, to Defendants in writing by certified and/or registered mail  
17 of the particular violations of § 1770 of the CLRA and demanded that Defendants rectify the problems  
18 associated with the actions detailed above and give notice to all affected consumers of Defendants'  
19 intent to so act.

20 50. Since then, the notice period—from the time Plaintiffs' counsel previously sent  
21 notification as required by the CLRA to the date of filing this Complaint—has run. Defendants have  
22 not rectified the notified issues within 30 days of the date of written notice pursuant to § 1782(a) of  
23 the CLRA. Accordingly, Plaintiffs now seek actual, punitive, and statutory damages as appropriate.

24 51. Pursuant to § 1780(d) of the CLRA, attached hereto as Exhibit C are affidavits  
25 showing that this action has been commenced in the proper forum.

**COUNT II**

**Violation of California Unfair Competition Law, Cal. Business & Professions Code § 17200, *et seq.* (On Behalf of Plaintiffs Cassandra Marshall, Raquel Riley, and the California Sub-Class)**

52. Plaintiffs Cassandra Marshall and Raquel Riley incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

53. Business & Professions Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising.” For the reasons discussed above, Defendants have violated each of these provisions of Business & Professions Code § 17200.

54. Defendants’ conduct caused and continues to cause substantial injury to Plaintiffs and the other members of the California Sub-Class. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants’ unfair conduct. Specifically, Defendants’ material representations and omissions induced reasonable purchasers, like Plaintiffs, to buy the Menopause Test, which they otherwise would not have purchased.

55. **Unlawful prong.** In the course of conducting business, Defendants committed “unlawful” business practices by violating the CLRA, as set forth in Count I, above.

56. **Unfair prong.** Defendants’ actions also constitute “unfair” business acts or practices because, as alleged above, *inter alia*, Defendants engaged in false advertising, misrepresented, and omitted material facts regarding the Clearblue Menopause Test, and thereby offended an established public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers. Defendants conduct of injecting pseudoscience about menopause—such as by claiming that FSH is relevant and that there are defined menopause stages when there are not—into the marketplace to sell useless FSH test sticks touted as a Menopause Indicator is of no benefit and is unfair to the midlife consumer women that Clearblue seeks to take advantage of as they enter the vulnerable time of their menopause transition. This conduct constitutes violations of the “unfair” prong of Business & Professions Code § 17200, *et seq.*

1           57.     **Fraudulent prong.** For the reasons detailed above, Defendants’ actions are  
2 “fraudulent” because starting in or around August 2023, Defendants falsely and misleadingly claim  
3 that the Clearblue Menopause Test is capable of indicating menopause stage and menopause when,  
4 in fact, FSH is a useless measurement for indicating menopause stage and menopause. Defendants’  
5 actions, claims, nondisclosures, and misleading statements, as more fully set forth above, were also  
6 false, misleading, and/or likely to deceive the consuming public within the meaning of Business &  
7 Professions Code § 17200, *et seq.*

8           58.     Plaintiffs, on behalf of themselves, the California Sub-Class, and the California public,  
9 seek restitution for Defendants’ violations of the UCL.

10          31.     **Inadequate Remedy at Law.** Legal remedies available to Plaintiff and Class members  
11 are inadequate because they are not equally prompt and certain and in other ways efficient as equitable  
12 relief. Damages are not equally certain as restitution because the standard that governs restitution is  
13 different than the standard that governs damages. Hence, the Court may award restitution even if it  
14 determines that Plaintiff and Class members fail to sufficiently adduce evidence to support an award  
15 of damages. Damages and restitution are not the same amount. Unlike damages, restitution is not  
16 limited to the amount of money the defendant wrongfully acquired plus the legal rate of interest.  
17 Equitable relief, including restitution, entitles a plaintiff to recover all profits from the wrongdoing,  
18 even where the original funds taken have grown far greater than the legal rate of interest would  
19 recognize. Legal claims for damages are not equally certain as restitution because claims under the  
20 statutes herein entail few elements. In short, significant differences in proof and certainty establish  
21 that any potential legal claim cannot serve as an adequate remedy at law. Due to these difference in  
22 proof and certainty, equitable relief is appropriate because Plaintiff may lack an adequate remedy at  
23 law for damages. Even if legal remedies may be available, Plaintiff seeks equitable remedies in the  
24 alternative to legal remedies which are as of yet uncertain.

**COUNT III**

**VIOLATIONS OF THE CONSUMER PROTECTION ACTS OF 50 STATES**

**(In the alternative, by All Plaintiffs on Behalf of the Nationwide Class)**

59. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

60. Plaintiffs also bring statutory consumer protection claims pursuant to consumer protection laws of the states of residence of Class Members identified below to the extent they are not in true conflict with the laws of California's CLRA and UCL.

61. The following consumer protection acts are collectively referred to herein as the "Consumer Protection Acts," all of which were enacted and designed to protect consumers against unlawful, fraudulent, and/or unfair business acts and practices.

- a. ALA. CODE § 8-19-1 *et seq.* (Alabama);
- b. ALASKA STAT. ANN. § 45.50.471 *et seq.* (Alaska);
- c. ARIZ. REV. STAT. ANN. § 44-1521 *et seq.* (Arizona);
- d. ARK. CODE ANN. § 4-88-101 *et seq.* (Arkansas);
- e. CAL. CIV. CODE § 1750 *et seq.* (California);
- f. COLO. REV. STAT. ANN. § 6-1-101 *et seq.* (Colorado);
- g. CONN. GEN. STAT. ANN. § 42-110a *et seq.* (Connecticut);
- h. DEL. CODE ANN. tit. 6, § 2511 *et seq.* (Delaware);
- i. D.C. CODE ANN. § 28-3901 *et seq.* (District of Columbia);
- j. FLA. STAT. ANN. § 501.201 *et seq.* (Florida);
- k. GA. CODE ANN. § 10-1-370 *et seq.* and GA. CODE ANN. § 10-1-390 *et seq.* (Georgia);
- l. HAW. REV. STAT. ANN. § 480-1 *et seq.* and HAW. REV. STAT. ANN. § 481A-1 *et seq.* (Hawaii);
- m. IDAHO CODE ANN. § 48-601 *et seq.* (Idaho);
- n. 815 ILCS 505/1 *et seq.* (Illinois);

- 1 o. IND. CODE ANN. § 24-5-0.5-1 *et seq.* (Indiana);
- 2 p. IOWA CODE 714H.1, *et seq.* (Iowa);
- 3 q. KAN. STAT. ANN. § 50-623 *et seq.* (Kansas);
- 4 r. KY. REV. STAT. ANN. § 367.110 *et seq.* (Kentucky);
- 5 s. LA. STAT. ANN. § 51:1401 *et seq.* (Louisiana);
- 6 t. MASS. GEN. LAWS, Ch. 93A (Massachusetts);
- 7 u. ME. REV. STAT. tit. 5, § 205-A *et seq.* (Maine);
- 8 v. MD. CODE ANN., COM. LAW § 13-101 *et seq.* (Maryland);
- 9 w. MICH. COMP. LAWS ANN. § 445.901 *et seq.* (Michigan);
- 10 x. MINN. STAT. ANN. § 325F.68 *et seq.*, MINN. STAT. ANN. § 325D.09 *et*  
11 *seq.*, MINN. STAT. ANN. § 325D.43 *et seq.*, and MINN. STAT. ANN. § 325F.67  
12 (Minnesota);
- 13 y. MISS. CODE ANN. § 75-24-1 *et seq.* (Mississippi);
- 14 z. MO. ANN. STAT. § 407.010 *et seq.* (Missouri);
- 15 aa. MONT. CODE ANN. § 30-14-101 *et seq.* (Montana);
- 16 bb. NEB. REV. STAT. ANN. § 59-1601 *et seq.* (Nebraska);
- 17 cc. NEV. REV. STAT. ANN. § 41.600 and NEV. REV. STAT. ANN. § 598.0903  
18 *et seq.* (Nevada);
- 19 dd. N.H. REV. STAT. ANN. § 358-A:1 *et seq.* (New Hampshire);
- 20 ee. N.J. STAT. ANN. § 56:8-1 *et seq.* (New Jersey);
- 21 ff. N.M. STAT. ANN. § 57-12-1 *et seq.* (New Mexico);
- 22 gg. N.Y. GEN. BUS. LAW. § 349 *et seq.* (New York);
- 23 hh. N.C. GEN. STAT. ANN. § 75-1 *et seq.* (North Carolina);
- 24 ii. N.D. CENT. CODE ANN. § 51-15-01 *et seq.* (North Dakota);
- 25 jj. OHIO REV. CODE ANN. § 1345.01 *et seq.* (Ohio);
- 26 kk. OKLA. STAT. ANN. tit. 15, § 751 *et seq.* (Oklahoma);
- 27 ll. OR. REV. STAT. ANN. § 646.605 *et seq.* (Oregon);

- mm. 73 PA. STAT. ANN. § 201-1 *et seq.* (Pennsylvania);
- nn. R.I. GEN. LAWS ANN. § 6-13.1-1 *et seq.* (Rhode Island);
- oo. S.C. CODE ANN. § 39-5-10 *et seq.* (South Carolina);
- pp. S.D. CODIFIED LAWS § 37-24-1 *et seq.* (South Dakota);
- qq. TENN. CODE ANN. § 47-18-101 *et seq.* (Tennessee);
- rr. TEX. BUS. & COMM. CODE, tit. 2, § 17 *et seq.* (Texas);
- ss. UTAH CODE ANN. § 13-11-1 *et seq.* (Utah);
- tt. VT. STAT. ANN. tit. 9, § 2451 *et seq.* (Vermont);
- uu. VA. CODE ANN. § 59.1-196 *et seq.* (Virginia);
- vv. WASH. REV. CODE ANN. § 19.86.010 *et seq.* (Washington);
- ww. W.VA. CODE ANN. § 46A-6-101 *et seq.* (West Virginia);
- xx. WIS. STAT. ANN. § 100.20 (Wisconsin); and
- yy. WYO. STAT. ANN. § 40-12-101 *et seq.* (Wyoming)

62. Defendants have engaged in deception, fraud, and unfair practices by their conduct and omissions described above. Accordingly, Defendants engaged in unfair or deceptive acts or practices as defined in the above Consumer Protection Acts, including: representing that the Menopause Test has characteristics, uses, benefits, and qualities which it does not have; representing that the Menopause Test is of a particular standard and quality when it is not; advertising the Menopause Test with intent not to sell it as advertised; and representing that the Menopause Test has been supplied in accordance with a previous representation when it has not.

63. The facts misrepresented or not disclosed by Defendants to Plaintiffs and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendants' Menopause Test. Had Defendants disclosed that the Menopause Test is not capable of indicating menopause stage and menopause, they would not have purchased the Menopause Test.

64. Plaintiffs and all Class Members were injured as a result of Defendants' conduct in that they purchased the Menopause Test, which is not capable of indicating menopause stage and



1 menopause, and did not receive the benefit of their bargain. These injuries are the direct and natural  
2 consequence of Defendants' omissions regarding the Menopause Test, as set forth in this Complaint,  
3 and were material and likely to deceive a reasonable consumer. Examples include Defendants'  
4 representations that the Menopause Test is capable of indicating menopause stage and menopause  
5 when, in fact, FSH is a useless measurement for indicating menopause stage and menopause. By  
6 omitting or concealing information regarding the Menopause Test when making these statements  
7 (and others in its advertising), Defendants' statements were untrue or misleading.

8         65. The injuries suffered by Plaintiffs and members of the Class are greatly outweighed  
9 by any potential countervailing benefit to consumers or to competition, nor are they injuries that those  
10 Plaintiffs and Class Members should have reasonably avoided.

11         66. The injuries of Plaintiffs and members of the Class were proximately caused by  
12 Defendants' fraudulent and deceptive business practices, and they are entitled to relief under the  
13 above-identified Consumer Protection Acts.

14         67. Defendants' conduct in this regard was wanton, willful, outrageous, and in reckless  
15 indifference to the rights of Plaintiffs and other members of the Class and, as such, warrants the  
16 imposition of punitive damages.

17                                   **PRAYER FOR RELIEF**

18         68. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,  
19 seek judgment against Defendants, as follows:

20                 (a) For an order certifying the Nationwide Class and the California Sub-Class  
21 under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiffs as  
22 representatives of the Classes, and naming Plaintiffs' counsel as Class Counsel to  
23 represent the Classes;

24                 (b) For an order finding in favor of Plaintiffs and the Classes on all counts asserted  
25 herein;

26                 (c) For an order awarding Plaintiffs and the proposed members of the Classes  
27 damages, including punitive damages;

- 1 (d) For an order awarding Plaintiffs and the proposed members of the Classes  
2 restitution;
- 3 (e) For reasonable attorneys' fees, costs, and expenses;
- 4 (f) For pre- and post-judgment interest on any amounts awarded; and
- 5 (g) For such other and further relief as may be just and proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiffs demand a trial by jury of any and all issues in this action so triable as of right.

8

9 Dated: January 28, 2025

Respectfully submitted,

10 /s/ Annick M. Persinger

11 Annick M. Persinger (CA Bar No. 272996)

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